

AMENDED IN SENATE SEPTEMBER 14, 2001

AMENDED IN SENATE JULY 18, 2001

AMENDED IN SENATE JULY 9, 2001

AMENDED IN ASSEMBLY APRIL 26, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 57

Introduced by Assembly Member Wright

December 4, 2000

An act to add Section ~~332.3~~ 399.10 to the Public Utilities Code, relating to public utilities, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical ~~energy~~-corporations: ~~contracts~~ *procurement plans.*

The

(1) *The* Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding ~~short-term and long-term contracts for the purchase of electricity and would state the intent of the Legislature with respect to the procurement of electricity by an electrical corporation. The bill would declare the intent of the Legislature that an electrical corporation, as defined, shall create a diversified procurement portfolio consisting of both short-term and~~

~~long-term electricity and electricity-related products providing guidance to electrical corporations and the Public Utilities Commission for the procurement of electricity by an electrical corporation and providing for review by the commission of procurement plans of electrical corporations.~~

This bill would amend the act to require the commission to ~~implement an incentive mechanism applicable to an electrical corporation's procurement of electricity for its customers in accordance with guidelines set forth in the bill. The bill would require the commission to reflect in bundled service rates, and to deem reasonable without engaging in a reasonableness review, any contract entered into by an electrical corporation~~ review and adopt a procurement plan for each electrical corporation in accordance with guidelines elements, incentive mechanisms, and objectives set forth in the bill.

The bill would authorize the commission to engage a highly capable independent consultant or advisory service to evaluate risk management and strategy. The bill would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, and to determine the impact of a proposed divestiture on an electrical corporations procurement plan.

The bill would allow an electrical corporation that serves less than 500,000 retail customers within the state to file with the commission a request for exemption from the provisions of the bill, which requested exemption the commission would be required to grant upon a showing of good cause.

(2) Existing law makes a violation of provisions of the Public Utilities Act a crime.

This bill, by imposing new requirements on electrical corporations, would expand the scope of that crime, and thus impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



(4) *The bill would appropriate \$600,000 from the Public Utilities Commission Utility Reimbursement Account to the Public Utilities Commission for the purposes of implementing this bill.*

Vote: ~~majority~~ ²/₃. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

~~SECTION 1. (a) The Legislature finds and declares that the~~

SECTION 1. *It is the intent of the Legislature to do all of the following:*

(a) *Provide guidance to electrical corporations and the Public Utilities Commission for the prospective procurement of electricity by an electrical corporation.*

(b) *Ensure, by no later than January 1, 2003, that each electrical corporation whose customers are currently being served by the Department of Water Resources will resume procurement for those needs that are not being met by the Department of Water Resources.*

(c) *Direct the Public Utilities Commission to review each electric corporation's procurement plan in a manner that assures creation of a diversified procurement portfolio, assures just and reasonable electricity rates, provides certainty to the electrical corporation in order to enhance its financial stability and creditworthiness, and eliminates the need, with specified exceptions, for after-the-fact reasonableness reviews of an electrical corporation's prospective electricity procurement performed consistent with an approved procurement plan.*

SEC. 2. *Section 399.10 is added to the Public Utilities Code, to read:*

399.10. (a) *Each electrical corporation shall file a proposed procurement plan with the commission 90 days after the commission specifies the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, to be provided by the Department of Water Resources under its power purchase agreements to the customers of the electrical corporation. The proposed procurement plan shall specify the date the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve, which shall be referred to for purposes of this subdivision as*

1 the “proposed commencement date.” The commission shall review
2 and adopt a procurement plan as specified in subdivisions (b), (c),
3 and (d) no later than 60 days prior to the proposed commencement
4 date. No later than January 1, 2002, the commission shall specify
5 the allocation of electricity, including quantity, characteristics,
6 and duration of electricity delivery, to be provided by the
7 Department of Water Resources under its power purchase
8 agreements to the customers of each electrical corporation, which
9 shall be reflected in an electrical corporation’s proposed
10 procurement plan.

11 (b) An electrical corporation’s proposed procurement plan
12 shall include, but is not limited to, the following:

13 (1) An assessment of the price risk associated with the
14 electrical corporation’s portfolio, including any utility-retained
15 generation, existing power purchase and exchange contracts, and
16 proposed contracts or purchases under which an electrical
17 corporation will procure electricity and electricity-related
18 products and the remaining open position to be served via spot
19 market transactions.

20 (2) A definition of each electricity product, electricity-related
21 product, and procurement related financial product, including
22 support and justification for the product type and amount to be
23 procured under the plan.

24 (3) The duration of the plan.

25 (4) The duration, timing, and range of quantities of each
26 product to be procured.

27 (5) A competitive procurement process under which the
28 electrical corporation may request bids for procurement-related
29 services, including the format and criteria of that procurement
30 process.

31 (6) An incentive mechanism, if any incentive mechanism is
32 proposed, including the type of transactions to be covered by that
33 mechanism, their respective procurement benchmarks, and other
34 parameters needed to determine the sharing of risks and benefits.

35 (7) The upfront standards and criteria by which the
36 acceptability and eligibility for rate recovery of a proposed
37 procurement transaction will be known by the electrical
38 corporation prior to execution of the transaction. This shall
39 include an expedited approval process for the commission’s review
40 of proposed contracts and subsequent approval or rejection

1 *thereof. The electrical corporation shall propose alternative*
2 *procurement choices in the event a contract is rejected.*

3 *(8) Procedures for updating the procurement plan.*

4 *(9) A showing that the procurement plan will create or maintain*
5 *a diversified procurement portfolio consisting of both short-term*
6 *and long-term electricity and electricity-related products.*

7 *(10) The electrical corporation's risk management policy,*
8 *strategy, and practices including specific measures of price*
9 *stability.*

10 *(11) A plan to achieve appropriate increases in diversity of*
11 *ownership and diversity of fuel supply of nonutility electrical*
12 *generation.*

13 *(12) A mechanism for recovery of reasonable administrative*
14 *costs related to procurement in the generation component of rates.*

15 *(c) The commission shall review and accept, modify, or reject*
16 *each electrical corporation's procurement plan. The commission's*
17 *review shall consider each electrical corporation's individual*
18 *procurement situation, and shall give strong consideration to that*
19 *situation in determining which one or more of the features set forth*
20 *in this subdivision shall apply to that electrical corporation. A*
21 *procurement plan approved by the commission shall contain one*
22 *or more of the following features, provided that the commission*
23 *shall not approve a feature or mechanism for an electrical*
24 *corporation if it finds that the feature or mechanism would impair*
25 *the restoration of an electrical corporation's creditworthiness or*
26 *would lead to a deterioration of an electrical corporation's*
27 *creditworthiness:*

28 *(1) A competitive procurement process under which the*
29 *electrical corporation may request bids for procurement-related*
30 *services. The commission shall specify the format of that*
31 *procurement process, as well as criteria to ensure that the auction*
32 *process is open and adequately subscribed. Any purchases made*
33 *in compliance with the commission-authorized process shall be*
34 *recovered in the generation component of rates.*

35 *(2) An incentive mechanism that establishes a procurement*
36 *benchmark or benchmarks and authorizes the electrical*
37 *corporation to procure from the market, subject to comparing the*
38 *electrical corporation's performance to the*
39 *commission-authorized benchmark or benchmarks. The incentive*
40 *mechanism shall be clear, achievable, and contain quantifiable*

1 objectives and standards. The incentive mechanism shall contain
2 balanced risk and reward incentives and will limit the risk and
3 reward of an electrical corporation.

4 (3) Upfront achievable standards and criteria by which the
5 acceptability and eligibility for rate recovery of a proposed
6 procurement transaction will be known by the electrical
7 corporation prior to the execution of the bilateral contract for the
8 transaction. The commission shall provide for expedited review
9 and either approve or reject the individual contracts submitted by
10 the electrical corporation to ensure compliance with its
11 procurement plan. To the extent the commission rejects a proposed
12 contract pursuant to this criteria, the commission shall designate
13 alternative procurement choices obtained in the procurement plan
14 that will be recoverable for ratemaking purposes.

15 (d) A procurement plan approved by the commission shall
16 accomplish each of the following objectives:

17 (1) Enable the electrical corporation to fulfill its obligation to
18 serve its customers at just and reasonable rates.

19 (2) Eliminate the need for after-the-fact reasonableness
20 reviews of an electrical corporation's actions in compliance with
21 an approved procurement plan, including resulting electricity
22 procurement contracts, practices, and related expenses. However,
23 the commission may establish a regulatory process to verify and
24 assure that each contract was administered in accordance with the
25 terms of the contract, and contract disputes which may arise are
26 reasonably resolved.

27 (3) Ensure timely recovery of prospective procurement costs
28 incurred pursuant to an approved procurement plan. The
29 commission shall establish rates based on forecasts of
30 procurement costs adopted by the commission, actual procurement
31 costs incurred, or combination thereof, as determined by the
32 commission. The commission shall establish power procurement
33 balancing accounts to track the differences between recorded
34 revenues and costs incurred pursuant to an approved procurement
35 plan. The commission shall review the power procurement
36 balancing accounts, not less than semiannually, and shall adjust
37 rates or order refunds, as necessary, to promptly amortize a
38 balancing account. Until January 1, 2006, this adjustment shall
39 occur no later than when the power procurement balancing
40 account adjustment is overcollected or undercollected in an

1 amount that exceeds 5 percent of the electrical corporation's
2 actual recorded generation revenues for the prior calendar year
3 excluding revenues collected for the Department of Water
4 Resources. After January 1, 2006, this adjustment shall occur
5 when deemed appropriate by the commission consistent with the
6 objectives of this section.

7 (4) Moderate the price risk associated with serving its retail
8 customers, including the price risk embedded in its long-term
9 supply contracts, by authorizing an electrical corporation to enter
10 into financial and other electricity-related product contracts.

11 (5) Provide for just and reasonable rates, with an appropriate
12 balancing of price stability and price level in the electrical
13 corporation's procurement plan.

14 (e) The commission shall provide for the periodic review and
15 prospective modification of an electrical corporation's
16 procurement plan.

17 (f) The commission may engage a highly capable independent
18 consultant or advisory service to evaluate risk management and
19 strategy. The reasonable costs of any consultant or advisory
20 service is a reimbursable expense and eligible for funding
21 pursuant to Section 631.

22 (g) The commission shall adopt appropriate procedures to
23 ensure the confidentiality of any market sensitive information
24 submitted in an electrical corporation's proposed procurement
25 plan or resulting from or related to its approved procurement plan,
26 including, but not limited to, proposed or executed power purchase
27 agreements, data request responses, or consultant reports, or any
28 combination, provided that the Office of Ratepayer Advocates and
29 other consumer groups that are nonmarket participants shall be
30 provided access to this information under confidentiality
31 procedures authorized by the commission.

32 (h) Nothing in this section alters, modifies, or amends the
33 commission's oversight of affiliate transactions under its rules and
34 decisions or the commission's existing authority to investigate and
35 penalize an electrical corporation's alleged fraudulent activities,
36 or to disallow costs incurred as a result of gross incompetence,
37 fraud, abuse, or similar grounds.

38 (i) An electrical corporation that serves less than 500,000
39 electric retail customers within the state may file with the

1 commission a request for exemption from this section, which the
2 commission shall grant upon a showing of good cause.

3 (j) Prior to its approval pursuant to Section 851 of any
4 divestiture of generation assets owned by an electrical corporation
5 on September 1, 2001, the commission shall determine the impact
6 of the proposed divestiture on the electrical corporation's
7 procurement rates and shall approve a divestiture only to the extent
8 it finds, taking into account the impact of the divestiture on
9 procurement rates, that the divestiture is in the public interest and
10 will result in net ratepayer benefits. Any electrical corporation's
11 procurement necessitated as a result of the divestiture of
12 generation assets on or after the effective date of the act adding this
13 subdivision shall be subject to the mechanisms and procedures set
14 forth in this section only if its actual cost is less than the recent
15 historical cost of the divested generation assets, or if the
16 commission deems that procurement eligible when it approves the
17 divestiture.

18 SEC. 3. Nothing in this act is intended to imply that
19 procurement of electricity from third parties is the preferred
20 method of fulfilling an electrical corporation's obligation to serve
21 its customers at just and reasonable rates.

22 SEC. 4. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

31 SEC. 5. The sum of six hundred thousand dollars (\$600,000)
32 is hereby appropriated from the Public Utilities Commission
33 Utility Reimbursement Account in the General Fund to the Public
34 Utilities Commission for the purposes of implementing this act.
35 ~~customers of an electrical corporation, as defined in Section 218~~
36 ~~of the Public Utilities Code, will benefit by the creation of a~~
37 ~~diversified procurement portfolio consisting of both short-term~~
38 ~~and long-term electricity and electricity-related products and~~
39 ~~lessening reliance on the spot markets, including the day-ahead~~
40 ~~and real-time markets. This portfolio will bring needed price~~

1 ~~stability at reasonable prices to all consumers and may attract new~~
2 ~~electric supply into the State of California. Procurement~~
3 ~~responsibilities for the net open positions (load not served by~~
4 ~~utility retained generation) of the three largest electrical~~
5 ~~corporations are currently being met by the Department of Water~~
6 ~~Resources.~~

7 ~~(b) It is the intent of the Legislature to do all of the following:~~

8 ~~(1) Provide guidance for the procurement of electricity by an~~
9 ~~electrical corporation.~~

10 ~~(2) Direct the Public Utilities Commission to establish~~
11 ~~standards under which the procurement of electricity and~~
12 ~~electricity related products by an electrical corporation will be~~
13 ~~deemed reasonable, and to the extent an electrical corporation~~
14 ~~requests, require the Public Utilities Commission to provide~~
15 ~~electrical corporations with an incentive to balance cost and risk~~
16 ~~goals for procurement.~~

17 ~~(3) Eliminate the need for after-the-fact reasonableness~~
18 ~~reviews of an electrical corporation's electricity procurement~~
19 ~~contracts, practices, and related expenses.~~

20 ~~SEC. 2.—Section 332.3 is added to the Public Utilities Code, to~~
21 ~~read:~~

22 ~~332.3.—(a) At least 180 days prior to an electrical corporation~~
23 ~~resuming procurement responsibility, the commission shall~~
24 ~~implement an incentive mechanism applicable to the electrical~~
25 ~~corporation's procurement of electricity for its customers,~~
26 ~~including, but not limited to, the format and approaches of a~~
27 ~~request for proposals (RFP) process. If the commission fails to~~
28 ~~implement an incentive mechanism within the timeframe~~
29 ~~prescribed, all purchases entered into by an electrical corporation~~
30 ~~shall be deemed reasonable and recoverable in rates until the~~
31 ~~commission implements an incentive mechanism. In developing~~
32 ~~an incentive mechanism, the commission shall ensure that the~~
33 ~~incentive mechanism includes all of the following:~~

34 ~~(1) Clear, achievable, and quantifiable objectives and~~
35 ~~standards.~~

36 ~~(2) Timely recovery of procurement costs.~~

37 ~~(3) Balanced risk and reward incentives.~~

38 ~~(4) Predetermined market-based price benchmarks.~~

39 ~~(5) Limited risk and reward for an electrical corporation.~~

40 ~~(6) Safety valves for major market disruptions.~~

~~(b) The commission shall reflect in bundled service rates, and deem reasonable without a reasonableness review, any contract entered into by an electrical corporation in accordance with subdivision (a), and subdivisions (c) to (j), inclusive, or, through an application by an electrical corporation that has been approved by the commission.~~

~~(c) For purposes of this section, a long-term forward contract is a contract with a duration of not less than one month.~~

~~(d) As part of the incentive mechanism implemented pursuant to subdivision (a), the commission shall deem long-term forward contracts reasonable if one or more of the following conditions are met, or the commission may reject a long-term forward contract without prejudice and designate spot market purchases in lieu of the rejected contract as per se reasonable for the term of the rejected contract or until the commission approves a replacement contract:~~

~~(1) Those contracts are entered into pursuant to the results of an open, competitive bidding process. One acceptable form for an open, competitive bid is a request for proposals (RFP). The commission shall deem reasonable any contract which is among 33 percent of the lowest price bids, as determined by cumulative quantity, that are received for a particular product in a given RFP or other bidding process. An RFP shall be considered open and competitive for a particular product if the request was distributed to at least 15 potential suppliers and there are conforming offers submitted by at least three suppliers, and notice of the RFP was posted on the electrical corporation's Web site concurrently with the distribution of the RFP, subject to any restriction or limitation established by the commission pursuant to subdivision (a), or the transactions are entered into through electricity exchanges or brokerage services which may also include electronic platforms with access to more than 15 potential suppliers.~~

~~(2) The contract was entered into by the electrical corporation through the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, or any other market or exchange recognized by the commission.~~

~~(3) Electrical corporations may enter into long-term forward contracts outside of the process described in paragraphs (1) and (2). Those contracts shall be subject to gains or losses according~~

1 to the incentive mechanism implemented by the commission
2 pursuant to subdivision (a).

3 (c) ~~An electrical corporation may file a procurement plan for~~
4 ~~the commission's review and approval. A procurement plan shall~~
5 ~~define all of the following:~~

6 (1) ~~The specific electricity and electricity-related products~~
7 ~~including type, quantity, duration, and timing of each product to~~
8 ~~be procured.~~

9 (2) ~~The standards to be used in evaluating those products.~~

10 (3) ~~A process for review and approval or rejection by the~~
11 ~~commission of contracts proposed by the electrical corporation~~
12 ~~pursuant to the plan.~~

13 (f) ~~Contracts entered into pursuant to a commission-approved~~
14 ~~procurement plan shall be deemed reasonable, shall be exempt~~
15 ~~from reasonableness review, and may not be eligible for gains or~~
16 ~~losses pursuant to the incentive mechanism implemented by the~~
17 ~~commission pursuant to subdivision (a).~~

18 (g) ~~It is anticipated that the electrical corporation will need to~~
19 ~~enter into short-term transactions, either through the Independent~~
20 ~~System Operator's short-term markets or third-party transactions,~~
21 ~~in order to supplement long-term supply contracts, or to balance~~
22 ~~the hourly load of its customers. Until the commission develops a~~
23 ~~benchmark that can be used for short-term procurement~~
24 ~~transactions in an incentive mechanism, these transactions by an~~
25 ~~electrical corporation shall be deemed reasonable. The~~
26 ~~commission may not adopt any benchmark for short-term~~
27 ~~electricity purchases unless that benchmark reasonably represents~~
28 ~~the market price of short-term purchases taking into account the~~
29 ~~timing of the purchases, the duration of the purchases, the location~~
30 ~~of delivery of the purchases, and other factors that are relevant to~~
31 ~~reasonably estimating market price.~~

32 (h) ~~At least 180 days prior to an electrical corporation resuming~~
33 ~~procurement responsibility, the commission shall develop a~~
34 ~~process allowing electrical corporations to enter into financial and~~
35 ~~other contracts to moderate the price risk associated with serving~~
36 ~~its customers, including the price risk embedded in its long-term~~
37 ~~supply contracts. If the commission fails to adopt a process within~~
38 ~~the time prescribed, electrical corporations may enter into~~
39 ~~financial and other contracts to moderate the price risk associated~~
40 ~~with its procurement portfolio. The contracts may be gas-based or~~

1 electricity-based. The contracts and the prices and premiums paid
2 by the electrical corporations for the contracts shall also be deemed
3 reasonable if the contracts are entered into by the electrical
4 corporation for the purpose of hedging the price risk associated
5 with the electrical corporation's procurement portfolio.

6 (i) ~~A purchase transaction entered into between an electrical~~
7 ~~corporation and a renewable energy developer shall be deemed~~
8 ~~reasonable if contract prices to the electrical corporation for~~
9 ~~renewable energy are less than 115 percent of the average of the~~
10 ~~lowest bid established pursuant to paragraph (1) of subdivision (d).~~
11 ~~Any transaction entered into at market-based rates by an electrical~~
12 ~~corporation shall be deemed reasonable if the contract price to the~~
13 ~~electrical corporation is less than the incremental cost of the~~
14 ~~corporation's retained generation and contractual energy~~
15 ~~resources, where that generation and those resources can be~~
16 ~~reduced in output by an amount greater than or equal to the amount~~
17 ~~purchased.~~

18 (j) ~~It is anticipated that the electrical corporations will need to~~
19 ~~procure from the Independent System Operator and third parties,~~
20 ~~or self-provide, ancillary and other related services, and be subject~~
21 ~~to charges by the Independent System Operator or its successor for~~
22 ~~imbalance energy, congestion charges, unaccounted-for energy~~
23 ~~charges, neutrality adjustment charges, and grid management~~
24 ~~charges. Until the commission develops a benchmark that can be~~
25 ~~used for ancillary service, and other related services and charges~~
26 ~~that may be imposed by the Independent System Operator or its~~
27 ~~successor in an incentive mechanism, the costs incurred by an~~
28 ~~electrical corporation shall be deemed reasonable.~~

29 (k) ~~It is anticipated that the electrical corporation will incur~~
30 ~~costs in connection with its procurement and risk management~~
31 ~~functions needed to serve its customers. These costs include the~~
32 ~~cost of staffing these functions as well as the cost of acquiring the~~
33 ~~maintaining systems needed to analyze, track, settle, and make~~
34 ~~payments pursuant to supply and hedging contracts, and the cost~~
35 ~~of meeting credit and collateral requirements. The costs incurred~~
36 ~~by an electrical corporation shall be recoverable in rates.~~

37 (l) ~~Under the protection of Section 583, each electrical~~
38 ~~corporation shall file quarterly with the commission its long-term~~
39 ~~forward contracts and financial contracts, together with an~~
40 ~~explanation of how those contracts meet the guidelines set forth in~~

1 ~~this section. The commission may verify the accuracy of these~~
2 ~~submissions for the sole purpose of ensuring compliance with~~
3 ~~these guidelines.~~

4 (m) ~~The commission shall adopt a ratemaking mechanism that~~
5 ~~ensures that the existing customers as of the date an electrical~~
6 ~~corporation enters into a bilateral contract to serve those customers~~
7 ~~remain responsible for, and pay, their proportionate share of the~~
8 ~~electrical corporation's obligations under each contract.~~

